

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED SPECIALTY INSURANCE
COMPANY, a Texas Corporation,

Plaintiff,

vs.

C.R. GUTTERS, INC., a Washington
Corporation; WILLIAM LYON HOMES, INC.,
a California Corporation; POLYGON
NORTHWEST COMPANY, LLC, a
Washington Limited Liability Company;
TAYLOR MORRISON, INC, a Delaware
Corporation; TAYLOR MORRISON
NORTHWEST, LLC, a Delaware Limited
Liability Company, formerly known as
POLYGON WLH, LLC, a Delaware Limited
Liability Company; SILVERLAKE CENTER,
LLC, a Washington Limited Liability Company;
TOWNHOMES AT SILVERLAKE
CONDOMINIUM ASSOCIATION,

Defendants.

No. 2:22-cv-00584

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff United Specialty Insurance Company alleges as follows:

I. PARTIES

1. Plaintiff United Specialty Insurance Company (“United Specialty”) is and was a
Texas Corporation with its principal offices located in Bedford, Texas. Plaintiff United Specialty

1 is and was engaged in the business of property and casualty insurance. United Specialty
2 issued a policy of insurance with effective dates of February 13, 2020, to February 13, 2021, Policy
3 No. DCIO 1425-00, providing commercial general insurance coverage to policyholder “C.R.
4 Gutters, Inc.” (“C.R. Gutters”), a Washington Corporation with its principal offices located in
5 Sumner, Washington.

6 2. Upon information and belief, Defendant William Lyon Homes, Inc. is a California
7 Corporation registered to do business in the State of Washington engaged primarily in the business
8 of real estate development with its principal offices located in either Newport Beach, California,
9 or Scottsdale, Arizona. It is believed, and therefore alleged, that Defendant William Lyon Homes,
10 Inc. is the parent corporate entity including subsidiary or related companies Polygon Northwest
11 Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; Polygon WLH, LLC;
12 and Silverlake Center, LLC, all entities involved in the development and construction of the
13 Townhomes at Silverlake Center.

14 3. Upon information and belief, Defendant Polygon Northwest Company, LLC is a
15 Washington Limited Liability Company engaged primarily in the business of real estate
16 development with its principal offices located in Scottsdale, Arizona. Based upon the registration
17 documents filed with the Washington Secretary of State, the only “member” of Defendant Polygon
18 Northwest Company, LLC is Defendant Taylor Morrison Northwest, LLC. Upon information and
19 belief based upon an examination into the residency of each member of Defendant Taylor Morrison
20 Northwest, LLC, it is believed that no member of that Limited Liability Company is a resident of
21 the State of Texas.

22 4. Upon information and belief, Defendant Taylor Morrison, Inc. is a Delaware
23 Corporation registered to do business in the State of Washington engaged primarily in the business

1 of real estate development with its principal offices located in Scottsdale, Arizona.

2 5. Upon information and belief, Defendant Taylor Morrison Northwest, LLC is a
3 Delaware Limited Liability Company registered to do business in the State of Washington and
4 engaged primarily in the business of real estate development with its principal offices located in
5 Scottsdale, Arizona. Defendant Taylor Morrison Northwest, LLC is related to and/or the successor
6 in interest to Defendant Polygon WLH, LLC, a Delaware Limited Liability Company that is also
7 registered to do business in the State of Washington and engaged primarily in the business of real
8 estate development with its principal offices located in Bellevue, Washington. Upon information
9 and belief based upon an examination into the residency of each member of Defendants Taylor
10 Morrison Northwest, LLC and/or Polygon WLH, LLC, it is believed that no member of either LLC
11 is a resident of the State of Texas.

12 6. Upon information and belief, Defendant Silverlake Center, LLC is a Washington
13 Limited Liability Company engaged primarily in the business of real estate development with its
14 principal offices located in Scottsdale, Arizona. Based upon the registration documents filed with
15 the Washington Secretary of State, the only “member” of Defendant Silverlake Center, LLC is
16 Defendant Polygon WLH, LLC, which is alleged to have no members who are residents of the
17 State of Texas after further investigation.

18 7. Defendant Townhomes at Silverlake Condominium Association, a Washington
19 Non-Profit Corporation, is named as a Defendant in this Declaratory Judgment action so that it
20 will also be bound by the determination of the Court as to United Specialty Insurance Company’s
21 lack of any legal obligation to pay for or reimburse its named insured, Defendant C.R. Gutters,
22 Inc. or additional insureds Defendants William Lyon Homes, Inc.; Polygon Northwest Company,
23 LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC from the

claims asserted by Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause No. 21-2-00759-31, for either a defense or indemnity in the Underlying Lawsuit.

II. JURISDICTION AND VENUE

8. This Court has original jurisdiction of this matter under 28 U.S.C. §1332, in that this is a civil action between citizens of different states in which the amount in controversy exceeds, exclusive of costs and interest, \$75,000.

9. This is a claim for declaratory relief as authorized by 28 U.S.C. §2201; the Washington Uniform Declaratory Judgment Act of RCW 7.24.010, *et seq.*; and by Rule 57 of the Federal Rules of Civil Procedure.

10. Venue is proper in the Western District of Washington because all of the parties were licensed and registered with the Washington Secretary of State to conduct business and did, in fact, transact business in the Western District of Washington and because the subject real property on which Defendants developed and constructed the Townhomes at Silverlake Center are located in Everett, Washington, within the Western District of Washington.

III. FACTUAL BACKGROUND

A. The Facts Giving Rise to the Underlying Lawsuit

11. This matter concerns insurance coverage for the defense of claims brought by the Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause

1 No. 21-2-00759-31.

2 12. The Complaint for Damages alleges the Townhomes at Silverlake Center Project
3 suffers from a variety of construction defects and incomplete constructed conditions, many of or
4 all of which are serious, systemic, have caused damage to themselves and other components,
5 and/or pose the risk of physical harm to persons or property. The defects are alleged to have
6 resulted in physical damage to the Project and the Association is informed and believes some of
7 the defects began causing such physical damage while construction was under way.

8 13. The Complaint for Damages in that matter alleges claims for (1) breach of express
9 and implied warranties lawsuit under the Washington Condominium Act as set forth in RCW
10 64.34.443 and RCW 64.34.445; (2) breach of the implied warranty of habitability; and (3) request
11 for disgorgement of allegedly fraudulent transfers by and between developers and builders of the
12 Townhomes at Silverlake Center in Everett, Snohomish County, Washington. All allegations of
13 the Complaint for Damages arise from the allegedly defective construction and other related
14 conduct by the developers and builders of the Townhomes at Silverlake Center.

15 14. Plaintiff United Specialty's named insured, Defendant C.R. Gutters, Inc., entered
16 into a contract with Defendant Silverlake Center, LLC on or about April 10, 2015, to perform
17 gutter installation and downspouts at the Townhomes at Silverlake Center, and C.R. Gutters, Inc.'s
18 work commenced on June 16, 2015, and ended on or around April 14, 2016.

19 15. As part of the contract between Defendant C.R. Gutters, Inc. and Defendant
20 Silverlake Center, LLC, Defendant C.R. Gutters, Inc. agreed to defend, indemnify, and hold
21 harmless Defendant Silverlake Center, LLC and its other related entities (including Defendants
22 William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor
23 Morrison Northwest, Inc.; and Polygon WLH, LLC) from any claims or suits arising out of the

1 Townhomes at Silverlake Center Project and to add as additional insureds under Defendant C.R.
2 Gutters, Inc.'s existing insurance coverage with United Specialty Defendant Silverlake Center,
3 LLC and its other related entities.

4 16. Following the filing of a Notice of Claim pursuant to RCW 64.50.020, Townhomes
5 at Silverlake Condominium Association sent that document on December 18, 2020, to Defendants
6 Silverlake Center, LLC and Polygon WLH, LLC. The Notice alleged construction defects to the
7 roof, walls, windows and doors, balconies and decks, allegedly causing water intrusion.

8 17. On or about February 18, 2021, Townhomes at Silverlake Condominium
9 Association filed and served the above-referenced Complaint for Damages upon Defendants
10 Silverlake Center, LLC; Polygon WLH, LLC; and Taylor Morrison, Inc.

11 18. On or about January 20, 2021, a tender of the claims from the above-referenced
12 lawsuit by Townhomes at Silverlake Condominium Association was received by United Specialty
13 on behalf of Polygon Northwest Company, LLC; Polygon WLH, LLC; Silverlake Center, LLC;
14 and their affiliated entities (hereafter collective referred to as "Polygon") demanding defense,
15 indemnity, and additional insured status pursuant to the Subcontract Agreement between C.R.
16 Gutters, Inc. and Silverlake Center, LLC dated April 10, 2015.

17 19. Pursuant to a Reservation of Rights Letter dated March 16, 2021, and a subsequent
18 Reservation of Rights Supplemental Letter dated May 18, 2021, Plaintiff United Specialty agreed
19 to defend the Polygon Defendants under a full reservation of rights as expressly set forth in those
20 letters and pursuant to the terms and conditions of United Specialty Insurance Company
21 Commercial General Liability Insurance Policy No. DCI01425-00 issued to named insured C.R.
22 Gutters, Inc. with an effective policy period from February 13, 2020 to February 13, 2021.

23 20. At the time of their tender of the claims of the Townhomes at Silverlake

1 Condominium Association, Defendants William Lyon Homes, Inc.; Polygon Northwest Company,
 2 LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC did not
 3 disclose that they were all potentially covered for the same losses under Owner-Controlled
 4 Insurance Program (“OCIP”) Wrap-Up Commercial General Liability and Excess Liability
 5 insurance policies issued to Polygon Northwest Corporation for the policy periods from December
 6 31, 2015 to December 31, 2017, and from December 31, 2017 to December 31, 2019, by
 7 International Insurance Co. of Hannover SE, UK Branch, and Certain Lloyd’s of London
 8 syndicates.

9 21. United Specialty Insurance Company Commercial General Liability Insurance
 10 Policy No. DCI01425-00, under which the additional insured tender of claims of Defendants
 11 William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor
 12 Morrison Northwest, Inc.; and Polygon WLH, LLC were accepted, contains Wrap-Up Exclusion
 13 Endorsement No. CG 21 54 01 96 which purports to invalidate duplicative coverage provided
 14 under United Specialty Insurance Company Commercial General Liability Insurance Policy No.
 15 DCI01425-00 in favor of the potentially applicable Polygon Northwest Company 2015-2017 and
 16 2017-2019 OCIP/Wrap-Up Program Policies referenced above.

17 22. If Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC;
 18 Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC had timely
 19 provided notice of the existence of the potentially applicable Polygon Northwest Company 2015-
 20 2017 and 2017-2019 OCIP/Wrap-Up Program Policies referenced above, Plaintiff United
 21 Specialty would not have accepted their tender of defense under a full reservation of rights but
 22 instead would have denied coverage of these additional insured tender of claims.

23 **B. United Specialty Insurance Company Policy No. DCI01425-00 Insurance Policy**

23. United Specialty Insurance Company issued to named insured C.R. Gutters, Inc. Commercial General Liability Insurance Policy No. DCI01425-00 with effective dates of February 13, 2020 to February 13, 2021. Commercial General Liability Form CG 10 00 01 04 13 provides, in pertinent part:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend any insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;”
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the “policy period,” no insured listed under Paragraph 1. of Section II – Who Is an Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “occurrence,” “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

- c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.

2. Exclusions

This insurance does not apply to:

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Sole for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
 - (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and
 - (b) Such attorneys’ fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

j. Damage To Property

“Property damage” to:

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or

- 1 (6) That particular part of any property
2 that must be restored, repaired or
3 replaced because “your work” was
4 incorrectly performed on it.

5 ***

6 Paragraphs (3), (4), (5) and (6) of this exclusion do
7 not apply to liability assumed under a sidetrack
8 agreement.

9 Paragraph (6) of this exclusion does not apply to
10 “property damage” included in the “products-
11 completed operations hazard”.

12 ***

13 **l. Damage To Your Work**

14 “Property damage” to “your work” arising out of it or
15 any part of it and included in the “products-completed
16 operations hazard”.

17 This exclusion does not apply if the damaged work
18 or the work out of which the damage arises was
19 performed on your behalf by a subcontractor.

20 **m. Damage To Impaired Property Or Property Not
21 Physically Injured**

22 “Property damage” to “impaired property” or
23 property that has not been physically injured, arising
 out of:

- (1) A defect, deficiency, inadequacy or
 dangerous condition in “your product” or
 “your work”; or
- (2) A delay or failure by you or anyone acting on
 your behalf to perform a contract or
 agreement in accordance with its terms.

 This exclusion does not apply to the loss of
 use of other property arising out of sudden
 and accidental physical injury to “your

product” or “your work” after it has been put to its intended use.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend:

- e. All court costs taxed against the insured in the “suit”. However, these payments do not include attorneys’ fees or attorneys’ expenses taxed against the insured.

SECTION V – DEFINITIONS

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

8. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

- a. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of “your product” or “your work” or your fulfilling the terms of the contractor agreement.

1 **13.** “Occurrence” means an accident, including continuous or
2 repeated exposure to substantially the same general harmful
3 conditions.

4 ***

5 **16.** “Products-completed operations hazard”:

6 **a.** Includes all “bodily injury” and “property damage”
7 occurring away from premises you own or rent and
8 arising out of “your product” or “your work” except:

9 **(1)** Products that are still in your physical
10 possession; or

11 **(2)** Work that has not yet been completed or
12 abandoned. However, “your work” will be
13 deemed completed at the earliest of the
14 following times:

15 **(a)** When all of the work called for in
16 your contract has been completed.

17 **(b)** When all of the work to be done at the
18 job site has been completed if your
19 contract calls for work at more than
20 one job site.

21 **(c)** When that part of the work done at a
22 job site has been put to its intended use
23 by any person or organization other
 than another contractor or
 subcontractor working on the same
 project.

 Work that may need service,
 maintenance, correction, repair or
 replacement, but which is otherwise
 complete, will be treated as
 completed.

b. Does not include “bodily injury” or “property
 damage” arising out of:

(1) The transportation of property, unless you

injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. “Property damage” means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

For the purposes of this insurance, electronic data is not tangible property.

18. “Suit” means a civil proceeding in which damages because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies are alleged.

21. “Your product”

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. “Your work”:

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
- (2) The providing of or failure to provide warnings or instructions.

The Policy also contains Policy Endorsement CG 21 67 12 04 – Fungi or Bacteria Exclusion, which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY**

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. **Exclusions** of **Section I – Coverage A – Bodily Injury and Property Damage Liability**:

2. Exclusions

This insurance does not apply to:

Fungi or Bacteria

- a.** “Bodily Injury or “property damage” which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any “fungi” or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b.** Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, “fungi” or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any “fungi” or bacteria that are, are on, or are contained

in, a good or product intended for bodily consumption

B. The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal and Advertising Liability:**

2. Exclusions

This insurance does not apply to:

Fungi or Bacteria

a. “Personal and advertising injury” which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any “fungi” or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.

b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, “fungi” or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the **Definitions** Section:

“Fungi” means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

The Policy also contains Policy Endorsement DC CGL 019 1115 – Exclusion – Continuous or Progressive Injury and Damage, which provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – CONTINUOUS OR PROGRESSIVE INJURY
AND DAMAGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. This insurance does not apply to any damages because of or related to “bodily injury” or “property damage”:

- 1.** Which first existed, or alleged to have first existed, prior to the inception date of this policy; or
- 2.** Which are, or are alleged to be, in the process of taking place prior to the inception date of this policy, even if the actual or alleged “bodily injury” or “property damage” continues during this policy period; or
- 3.** Which were caused, or are alleged to have been caused, by the same condition or construction defect which resulted in “bodily injury” or “property damage” which first existed prior to the inception date of this policy.

We shall have no duty to defend any insured against any loss, claim, “suit” or other proceeding alleging damages arising out of or related to “bodily injury” or “property damage” to which this endorsement applies.

All other terms and conditions of this policy remain unchanged.

The Policy also contains Policy Endorsement CG 21 54 01 96, which provides as follows with respect to the Wrap-Up Exclusion:

The Policy also contains Policy Endorsement CG 21 54 01 96 – Wrap-Up Exclusion, which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY.**

**EXCLUSION – DESIGNATED OPERATIONS COVERED BY
A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

Any and all consolidated Insurance Program (Wrap-Up) locations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph 2. , Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) :

This insurance does not apply to “bodily injury” or “property damage” arising out of either your ongoing operations or operations included within the “products-completed operations hazard” at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

C. OCIP CGL Policy No. CHF15/YF15CP01/010 (12/31/2015 to 12/31/2017) and OCIP CGL Policy No. CC1700361 (12/31/2017 to 12/31/2019)

24. The Contractors Liability Insurance Policies (OCIP/Wrap Policy) issued by International Insurance Co. of Hannover SE, UK Branch, and Certain Lloyd’s of London

1 syndicates as part of the Owner-Controlled Insurance Program (“OCIP”) Wrap-Up Commercial
 2 General Liability and Excess Liability insurance policies issued to Polygon Northwest Corporation
 3 for the policy periods from December 31, 2015 to December 31, 2017, and from December 31,
 4 2017 to December 31, 2019, contain the following insuring language:

5 **SECTION I – COVERAGES**

6 **A. INSURING AGREEMENTS**

7 **1. COVERAGE A – BODILY INJURY AND PROPERTY 8 DAMAGE LIABILITY**

9 **a.** We will pay those sums in excess of the “self-insured
 10 retention(s)” that an insured becomes legally
 11 obligated to pay as damages because of “bodily
 12 injury” or “property damage” to which this insurance
 13 applies. Upon exhaustion of all applicable “self-
 14 insured retention(s)” under this policy, we have the
 15 right and duty to defend the insured against any
 16 “suit” seeking those damages in excess of the “self-
 17 insured retention(s)”.

18 **b.** This insurance applies to “bodily injury” or “property
 19 damage” only if:

20 **(1)** The “bodily injury” or “property damage” is
 21 caused by an “occurrence” that takes place in
 22 the “coverage territory”;

23 **(2)** The “bodily injury” or “property damage”
 occurs during the policy period; and

(3) Prior to the policy period, no insured listed
 under Paragraph 1. of Section II – Who Is An
 Insured and no “employee” authorized by
 you to give or receive notice of an
 “occurrence” or claim, knew that the “bodily
 injury” or “property damage” had occurred,
 in whole or in part. If such a listed insured or
 authorized “employee” knew, prior to the
 policy period, that any portion of the “bodily
 injury” or “property damage” had occurred,

then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change, or resumption of that “bodily injury” or “property damage” after the end of the policy period.

d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

(1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or

(3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

e. Damages because of “bodily injury”

include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

2. COVERAGE B – HOME PERFORMANCE FAILURE(S) AND CONSTRUCTION DAMAGE LIABILITY

a. We will indemnify you for those sums in excess of the “self-insured retention(s) you are legally obligated to incur or pay as “repair costs” for “Home Performance Failure(s)” within the “products-completed operations hazard” under an approved “Home Performance Agreement” issued by you or on your behalf. Upon exhaustion of all applicable “self-insured retention(s)” under this policy, we will have the right and duty to defend you against any claim of “Home Performance Failure(s)” or “suit” seeking “repair costs”.

(1) This insurance applies to “repair costs” for “Home Performance Failure(s)” only if the “repair costs”:

(a) Are caused by a “construction occurrence” that takes place in the “coverage territory”; and

(b) Arise from “Home Performance Agreements” on “homes” or “common elements” that you sell, trade, give away or otherwise transfer control of during the policy period.

In the event that the “common elements” are in a residential structure, control of the “common elements” shall be considered to have been transferred upon the date of the transfer of title to the first “home” within that structure. When the “common elements” are separate from a residential structure, control of the “common elements” shall be

considered to have been transferred upon the transfer of legal control over the entity that owns title to the “common elements” from you to another entity.

b. We will pay those sums in excess of the “self-insured retention(s)” that an insured becomes legally obligated to pay as damages because of “property damage” to or arising out of “your work” included within the “products-completed operations hazard”. Upon exhaustion of all applicable “self-insured retention(s)” we will have the right and duty to defend the insured against any “suit” seeking those damages.

(1) This insurance applies to “property damage” only if:

(a) The “property damage” is caused by a “construction occurrence” that takes place in the “coverage territory”; and

(b) The “property damage” is to or arises out of “your work” that:

i. you sell, give away or otherwise transfer control of during the policy period; or

ii. which first qualifies within the “products-completed operations hazard” during the policy period, whichever is earlier.

B. EXCLUSIONS

1. COMMON EXCLUSIONS – ALL COVERAGES

This insurance does not apply to

* * *

m. Engineers, Architects or Surveyors professional liability

Liability arising out of the rendering of or failure to render any “professional services” by you or any engineer, architect, or surveyor who is either employed by you or performing work on your behalf in such capacity, except arising out of “bodily injury” or “property damage”.

SECTION II – WHO IS AN INSURED

3. Any person or organization that you have agreed by written contract or written agreement to add as an insured under this policy is an insured. However:

a. Coverage under **Coverage A** and **Coverage C**, is limited to liability which:

(1) Arises out of your ongoing operations; or

(2) Arises out of “your work” performed by such person or organization for the Named Insured.

b. Coverage A does not apply to “bodily injury” or “property damage” that occurred before you entered into that written contract or written agreement;

c. Coverage B does not apply to:

(1) “property damage”:

(a) To that particular portion of “your work” performed on your behalf by the person or organization you have agreed by written contract or written agreement to add as an insured; and

(b) That occurred before you entered into

1 that written contract or written
2 agreement.

- 3 (1) “repair costs” for “Home Performance
4 Failure(s)” taking place before you entered
into that written contract or written
agreement.

5 * * *

6 **SECTION IV – DEFINITIONS**

7 * * *

- 8 6. “Construction occurrence” means an event, happening or
9 accident including continuous or repeated exposure to
substantially the same general harmful conditions.

10 For purposes of this policy, all “construction occurrences”
11 that affect more than one “home” shall be deemed to
12 constitute a single “construction occurrence” if all such
“homes” are physically located within the same project
described in the Self-Insured Retention section in the
Declarations.

13 For purposes of **Coverage B** only, notwithstanding any of
14 the foregoing, a “construction occurrence” may include one
15 or more “Home Performance Failure(s)” or “property
damage” to the “home” or “common elements”.

16 * * *

- 17 15. “Home Performance Failure(s)” means the presence of a
18 condition or conditions arising out of the failure of the
19 “home” or “common elements” to conform with the
standards set forth in your approved “Home Performance
20 Agreement” or that is in violation of any state statute such as
California SB 800 or equivalent statute in other states. For
the purposes of this section, state statutes do not include
21 local or state building codes or administrative standards for
construction.

22 * * *

- 23 28. “Repair costs” means the cost to repair or replace or

otherwise resolve a “Home Performance Failure(s)”. It includes all costs covered by the “home Performance Agreement”.

* * *

As part of the Declarations Page for OCIP CGL Policy No. CHF15/YF15CP01/010 (12/31/2015 to 12/31/2017) and OCIP CGL Policy No. CC1700361 (12/31/2017 to 12/31/2019), the following is included with respect to Single “Construction Occurrence” Project Locations:

SINGLE “CONSTRUCTION OCCURRENCE” PROJECT LOCATIONS and DESCRIPTIONS

Project	Location	Description
All projects	Southern California Region	586 detached units and 1,146 attached units
All projects	Inland Empire California Region	(see above)
All projects	Northern California Region	(see above)
All projects	Arizona Region	1,101 detached units and 17 attached units
All projects	Nevada Region	777 detached units
All projects	Colorado Region	547 detached units and 48 attached units
All projects	Oregon Region	1,171 detached units and 298 attached units
All projects	Washington Region	772 detached units and 483 attached units

An Endorsement to OCIP CGL Policy No. CHF15/YF15CP01/010 (12/31/2015 to 12/31/2017) and OCIP CGL Policy No. CC1700361 (12/31/2017 to 12/31/2019) includes the following Named Insured Endorsement:

NAMED INSURED ENDORSEMENT

It is hereby understood and agreed that the following named insured apply to this policy:

* * *

CLOSED PROJECTS

* * *

SILVERLAKE CENTER, LLC

* * *

25. Incorporated herein by this reference, is a true and correct copy of the Owner-Controlled Insurance Program (“OCIP”) Wrap-Up Commercial General Liability and Excess Liability insurance policies issued to Polygon Northwest Corporation CGL Policy No. CHF15/YF15CP01/010 with effective dates of December 31, 2015, to December 31, 2017.

26. The above-quoted insuring language, subject to the terms, conditions, and exclusions of OCIP CGL Policy No. CHF15/YF15CP01/010 (12/31/2015 to 12/31/2017) and OCIP CGL Policy No. CC1700361 (12/31/2017 to 12/31/2019), potentially provides coverage for “bodily injury” or “property damage” arising out of either ongoing operations or operations included within the “products-completed operations hazard” at the location of the Townhomes at Silverlake Center Project for Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH LLC under Owner-Controlled Insurance Program (“OCIP”) Wrap-Up Commercial General Liability and Excess Liability insurance policies issued to Polygon Northwest Corporation and its related and affiliated companies, contractors, and subcontractors, including Defendant C.R. Gutters, Inc.

27. The existence of the above-quoted insuring language of the Owner-Controlled Insurance Program (“OCIP”) Wrap-Up Commercial General Liability and Excess Liability insurance policies issued to Polygon Northwest Corporation and its related and affiliated

companies, contractors, and subcontractors, including Defendant C.R. Gutters, Inc. (whether or not any particular entity agreed to participate in such coverage), triggers the Wrap-Up Exclusion language of United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Policy Endorsement CG 21 54 01 96, excluding from coverage any claims for “bodily injury” or “property damage” arising out of either ongoing operations or operations included within the “products-completed operations hazard” at the location of the Townhomes at Silverlake Center Project, because a consolidated (wrap-up) insurance program was provided by the prime contractor/project manager or owner of the construction project in which Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; Polygon WLH LLC; and C.R. Gutters, Inc. was involved.

IV. JUSTICIABLE CONTROVERSY

28. An actual and justiciable controversy exists between Plaintiff United Specialty Insurance Company and Defendants/Named Insured C.R. Gutters, Inc. concerning whether there is insurance coverage under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00 for the claims asserted by the Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause No. 21-2-00759-31.

29. An actual and justiciable controversy exists between Plaintiff United Specialty Insurance Company and additional insureds Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; Polygon

1 WLH LLC, concerning whether there is insurance coverage under United Specialty Insurance
 2 Company Commercial General Liability Insurance Policy No. DCI01425-00 for the claims
 3 asserted by the Townhomes at Silverlake Condominium Association in Snohomish County
 4 Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center,*
 5 *LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County
 6 Superior Court Cause No. 21-2-00759-31.

7 **V. FIRST CLAIM FOR RELIEF – DECLARATORY RELIEF**

8 30. Plaintiff United Specialty hereby realleges and incorporates by reference the
 9 allegations of paragraphs 1 through 30 as though fully set forth verbatim.

10 31. In accordance with RCW 7.24.010 through RCW 7.24.190, Plaintiff United
 11 Specialty seeks a ruling from this Court that the Wrap-Up Exclusion language of United Specialty
 12 Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Policy
 13 Endorsement CG 21 54 01 96 is a valid and enforceable exclusion from coverage under
 14 Washington law.

15 32. Plaintiff United Specialty further seeks a ruling from this Court that because a
 16 consolidated (wrap-up) insurance program was available and provided by the prime
 17 contractor/project manager or owner of the Silverlake Center Project in which Defendants William
 18 Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison
 19 Northwest, Inc.; Polygon WLH LLC; and C.R. Gutters, Inc. either did or could have participated
 20 and that could or would provide coverage for the property damage claims brought by the
 21 Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled
 22 as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH,*
 23 *LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause

No. 21-2-00759-31, the Wrap-Up Exclusion language of United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Policy Endorsement CG 21 54 01 96, excludes from coverage any claims for “bodily injury” or “property damage” under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00.

33. Coverage is limited or precluded under other or further policy language or on other grounds that may restrict or preclude coverage under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00.

34. Plaintiff United Specialty further seeks a ruling from this Court that because the Wrap-Up Exclusion language of United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Policy Endorsement CG 21 54 01 96, is valid and enforceable and excludes from coverage any claims for “bodily injury” or “property damage” under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Plaintiff United Specialty owes no duty to defend or indemnify its named insured, Defendant C.R. Gutters, Inc., from the claims asserted by Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause No. 21-2-00759-31.

35. Plaintiff United Specialty further seeks a ruling from this Court that because the Wrap-Up Exclusion language of United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Policy Endorsement CG 21 54 01 96, is valid and enforceable and excludes from coverage any claims for “bodily injury” or “property damage” under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Plaintiff United Specialty owes no duty to defend or indemnify additional insureds

Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC from the claims asserted by Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause No. 21-2-00759-31.

36. Plaintiff United Specialty further seeks a ruling from this Court that because the Wrap-Up Exclusion language of United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, Policy Endorsement CG 21 54 01 96, is valid and enforceable and excludes from coverage any claims for “bodily injury” or “property damage” under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, and because Plaintiff United Specialty owes no duty to defend or indemnify named insured C.R. Gutters, Inc. or additional insureds Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC from the claims asserted by Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause No. 21-2-00759-31, Plaintiff United Specialty is entitled to immediately withdraw its defense of Defendant/Named Insured C.R. Gutters, Inc. and additional insureds Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC in the underlying Lawsuit.

37. In the event that the Court finds that Plaintiff United Specialty Insurance Company

Commercial General Liability Insurance Policy No. DCI01425-00 provides coverage for Defendants C.R. Gutters, Inc.; William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC against the claims asserted by Townhomes at Silverlake Condominium Association in Snohomish County Superior Court styled as *Townhomes at Silverlake Condominium Association v. Silverlake Center, LLC; Polygon WLH, LLC; Taylor Morrison, Inc.; and Doe Transferees 1-20*, Snohomish County Superior Court Cause No. 21-2-00759-31, Plaintiff United Specialty seeks this Court's judicial confirmation that the entirety of all coverages afforded under United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00 is subject to the per occurrence and aggregate limits of liability stated in the Declarations Page of United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, inclusive of defense costs and fees, and subject to application of a stated deductibles to be paid by Defendants C.R. Gutters, Inc.; William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC.

VI. PRAYER FOR RELIEF

Plaintiff United Specialty Insurance Company prays for the following relief:

For a Declaratory Judgment in its favor that:

(1) United Specialty Insurance Company Commercial General Liability Insurance Policy No. DCI01425-00, with effective dates of February 13, 2020 to February 13, 2021, does not provide coverage for the claims asserted by Townhomes at Silverlake Condominium against Defendant/Named Insured C.R. Gutters, Inc. or additional insureds Defendants William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison Northwest, Inc.; and Polygon WLH, LLC in the underlying Lawsuit.

1 (2) United Specialty Insurance Company Commercial General Liability Insurance
2 Policy No. DCI01425-00, with effective dates of February 13, 2020 to February 13, 2021, has no
3 duty to defend Defendant/Named Insured C.R. Gutters, Inc. or additional insureds Defendants
4 William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor
5 Morrison Northwest, Inc.; and Polygon WLH, LLC in the underlying Lawsuit.

6 (3) United Specialty Insurance Company Commercial General Liability Insurance
7 Policy No. DCI01425-00, with effective dates of February 13, 2020 to February 13, 2021, has no
8 duty to indemnify Defendant/Named Insured C.R. Gutters, Inc. or additional insureds Defendants
9 William Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor
10 Morrison Northwest, Inc.; and Polygon WLH, LLC in the underlying Lawsuit.

11 (4) United Specialty Insurance Company is entitled to immediately withdraw its
12 defense of Defendant/Named Insured C.R. Gutters, Inc. or additional insureds Defendants William
13 Lyon Homes, Inc.; Polygon Northwest Company, LLC; Taylor Morrison, Inc.; Taylor Morrison
14 Northwest, Inc.; and Polygon WLH, LLC in the underlying Lawsuit.

15 (5) For Plaintiff United Specialty Insurance Company's attorneys' fees and costs to the
16 extent permitted by law.

17 (6) For such other and further relief as this Court may deem just and equitable.

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1 DATED this 29th day of April, 2022.

2 FORSBERG & UMLAUF, P.S.

3 s/ Ryan J. Hesselgesser

4 Ryan J. Hesselgesser, WSBA #40720

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